

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(San Jose, CA)

FRIENDLY TRANSPORTATION, INC.

Employer¹

and

Case 32-RC-4624

LABORERS LOCAL 270,
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a Delaware corporation with a main office located in Oakland, California and a branch office located in San Jose, California where the Employer is engaged in transporting aged and handicapped customers. During the past calendar year, the Employer has received revenues in excess of \$250,000 for providing services to COMSIS Mobility Services, Inc., a broker for AC Transit and the Bay area Rapid Transit Consortium, both of which received said funds directly from the United States Government. Based on the foregoing, the Employer is engaged in commerce within the meaning of the Act and the assertion of jurisdiction is warranted herein.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner has been amended to reflect its affiliation with the AFL-CIO.

3. The record establishes that the Petitioner has employees as members and that it negotiates collective bargaining agreements on behalf of such employees concerning their terms and conditions of employment. Based upon the foregoing, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. G.H. Bass Caribbean, Inc., 306 NLRB 823 (1992)

4. Petitioner claims to represent certain employees of the Employer and made a demand upon the Employer to be recognized as the exclusive collective bargaining representative of the said employees. The Employer declined to recognize the Petitioner. Accordingly, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. By its petition, Petitioner seeks to represent all full-time and regular part-time drivers, dispatchers, car washers, and mechanics employed at the Employer's 597 West Taylor Street, San Jose, California facility. Petitioner would exclude all other employees as well as guards and supervisors as defined by the Act. Contrary to Petitioner, the Employer argues that only the drivers and dispatchers should be included in the unit. For the reasons set forth below, I find that a unit of driver/car washers, dispatchers, and mechanics employed at the Employer's San Jose, California facility, is an appropriate unit.

The Employer's San Jose facility began operations in February 1999 and consists of an office building, a large parking yard, and a maintenance building where vehicles are repaired and maintained. The facility is managed by Bajit Singh, owner. Rick James acts as assistant manager. James is currently on medical leave and Rolinda Pannel is currently acting assistant manager. The Employer employs approximately 20 to 25 drivers who drive its 28 passenger vehicles and vans during scheduled day and night shifts. The drivers pick up handicapped or elderly people at their homes and transport them throughout the San Jose area. The drivers perform pre-trip inspections of the vehicles and are also assigned as car washers to wash their respective vehicles. Although it is unclear whether there are drivers who act as dispatchers, or employees employed solely in the dispatcher classification, there appear to be from 1 to 4 dispatchers who take calls from customers requesting transportation. The dispatchers assign a daily route to each driver covering the rides requested for the day. They also contact the drivers by radio for additional dispatches during the course of the shift. The dispatchers are responsible for maintaining accurate records of their interaction with drivers in order to maintain a daily detailed report of all trip-related activity. After their shifts, the drivers return the vehicles to the yard. The Employer also employs 1 or 2 mechanics who perform maintenance and repair work on the Employer's vehicles, as well as washing vehicles when they are returned to the yard at the end of the shift. In addition, when more mechanics are needed, mechanics from the Oakland facility are assigned temporarily to the San Jose facility.³

In deciding the appropriateness of a bargaining unit, the Board first considers the union's petition and whether the requested unit is appropriate. Overnite Transportation Company, 322

³ The Petitioner does not seek to represent the mechanics temporarily assigned from the Oakland facility. As set forth below, the Oakland mechanics are represented by Amalgamated Transit Workers, Local 196.

NLRB 723 (1996). The Board, however, does not compel a petitioner to seek any particular appropriate unit. *Id.* The petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceedings, the unit sought by the petitioner is always a relevant consideration. Lundy Packing Co., 314 NLRB 1042, 1043 (1994). A union is, therefore, not required to request representation in a narrower appropriate unit if a broader unit is also appropriate. Overnight, *supra* at 723.

Here, the driver/car washers⁴, dispatchers, and mechanics work together at the same facility and share common supervision in the persons of Singh and Pannel. In addition, the drivers and dispatchers interact on a daily basis when route assignments and radio contact are made. Furthermore, the drivers and mechanics share the same job responsibilities of maintaining and washing cars. In the absence of any evidence to the contrary, the record establishes that the petitioned for employees share a sufficient community of interest to warrant their placement in the same unit. See Norfolk, Baltimore, and Carolina Lines, Inc., 175 NLRB 209 (1969); Frank Hager, Inc., 230 NLRB 476 (1977); Carpenter Trucking, 266 NLRB 907 (1983).

The Employer introduced its recently negotiated contract with the Amalgamated Transit Union, Local 192 covering drivers, dispatchers, mechanics, and maintenance employees employed at its Oakland facility apparently in an attempt to contend that the San Jose facility is an accretion to the Oakland facility unit. To the extent that the Employer asserts that a contract bar exists to the instant petition, this argument is without factual support in the record. Although, as set forth above, there is evidence that, on occasion, mechanics from the Oakland facility perform work on a temporary basis at the San Jose facility, there is no other evidence to establish a community of interest between the two facilities such that the boundaries of the Oakland unit should be extended to cover employees at a distant location who have never indicated their support of the Amalgamated Transit Union. In such circumstances, the Board is reluctant to find accretion in deference to the statutory policy of employee free choice. See Sunset House, 167 NLRB 870 (1967); The Wakenhut Corporation, 226 NLRB 1085 (1976); Save Mart of Modesto, Inc., 293 NLRB 1190 (1989).

In summary, and based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time driver/car washers, dispatchers, and mechanics employed at the Employer's facility located at 597 West Taylor St., San Jose, California; excluding, all other employees, guards and supervisors as defined in the Act.

There are approximately 25 employees in the unit found appropriate.

⁴ Although the Petitioner seeks the inclusion of "car washers" in the unit, there do not appear to be any employees employed in a separate classification of car washer at the present time. Nor does the record indicate that the Employer intends to hire employees in this separate classification. Rather, drivers and mechanics are assigned to perform the car washing job function.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election⁵ to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **LABORERS LOCAL 270, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, 1301 Clay Street, Suite 300 N, Oakland, California 94612-5211, on or before June 28, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

⁵ Please read the attached notice requiring that the election notices be posted at least three (3) days prior to the election.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 6, 1999.

DATED AT Oakland, California, this 21st day of June, 1999.

/s/ James S. Scott
James S. Scott, Regional Director
National Labor Relations Board
Region 32
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